



THE PERMANENT REPRESENTATIVE  
OF THE  
UNITED STATES OF AMERICA  
TO THE  
ORGANIZATION OF AMERICAN STATES  
WASHINGTON, D.C.  
June 30, 2015

Emilo Icaza  
Executive Secretary  
Inter-American Commission on Human Rights  
Organization of American States  
Washington, DC 20006

Re: **The Inter-American Commission on Human Rights' (IACHR) Report on the Human Rights' Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America**

Dear Mr. Icaza:

I have the honor to transmit to you the enclosed observations of the United States' Government in reference to IACHR's draft "Report on the Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America."

Please accept renewed assurances of my highest consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael J. Fitzpatrick".

Michael J. Fitzpatrick  
Interim Permanent Representative

Enclosure: United States' Response to Draft Report

**UNITED STATES RESPONSE TO THE DRAFT REPORT ON  
THE “HUMAN RIGHTS SITUATION OF REFUGEE AND  
MIGRANT FAMILIES AND UNACCOMPANIED CHILDREN IN  
THE UNITED STATES OF AMERICA”  
JUNE 30, 2015**

**INTRODUCTION:**

The United States appreciates the opportunity to comment on the draft “Report on the Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America.” We acknowledge the Commission’s efforts in preparing this draft report, and are pleased that we could facilitate the Commission’s visits to the Department of Homeland Security’s detention facilities and the Department of Health and Human Services’ care provider facilities and its various consultations in the United States, primarily in 2008, 2009, and 2014. The United States respects and supports the Commission and the strong sense of integrity and independence which historically has characterized its work. Nevertheless, the United States notes that the report contains omissions and inaccuracies that would usefully be corrected, and therefore requests that the Commission review its analysis of applicable law and procedures prior to final publication.

The United States is proud of its history as a nation of immigrants. As the Commission recognizes in the report, the United States remains the principal destination country for international migrants in the world and is one of the leading countries for granting asylum and resettling refugees. Of the more than 190 million migrants in the world today, one out of five resides in the United States, and we value the contributions they make to our economy, our culture, and our social fabric.

As President Obama stated in his Immigration Address on July 1, 2010 at American University:

“It is this constant flow of immigrants that helped to make America what it is. ... To this day, America reaps incredible economic rewards because we remain a magnet for the best and brightest from across the globe. ... And in an increasingly interconnected world ... being an American is not a matter of blood or birth. It’s a matter of faith. ... ‘E pluribus unum.’ Out of many, one. That is what has drawn the persecuted and impoverished to our shores. That’s what led the



innovators and risk-takers from around the world to take a chance here in the land of opportunity. That's what has led people to endure untold hardships to reach this place called America."

The United States can state without hesitation that migrants and their families have made immeasurable contributions to the United States since the nation was established and can be found in top positions in the government, business, media, and the arts.

## **RELEVANT INTERNATIONAL LEGAL FRAMEWORK:**

Immigration is an issue of critical importance to the United States, and is extensively addressed by U.S. law and policy. As the Commission knows, international law recognizes that every state has the sovereign right to control admission to its territory, and to regulate the admission and expulsion of foreign nationals consistent with any international obligations it has undertaken. This principle has long been recognized as a fundamental attribute of state sovereignty.

As we have stated before, the United States notes that contrary to the Commission's assertions, neither the American Declaration of the Rights and Duties of Man ("American Declaration") nor international law establishes a presumption of liberty for undocumented migrants who are present in a country in violation of that country's immigration laws. Rather, states assume legal obligations, or undertake political commitments, to protect the right of freedom of movement to persons *lawfully* within a state's territory.

For example, Article VIII of the American Declaration, on freedom of movement, by its own terms extends only to nationals. Article XXXIII of the Declaration also recognizes "the duty of every person to obey the law and other legitimate commands of the authorities of his country and those of the country in which he may be." Non-nationals seeking to enter a state are bound to respect the state's immigration laws and may be subject to various measures, including detention, as appropriate, when they fail to obey the law. In fact, immigration detention can be an important tool employed by states in ensuring public order and safety and removing as expeditiously as possible individuals who are not eligible to remain or who may pose a threat to the security of the country or the safety of its citizens and lawful residents. Accordingly, immigration detention, provided it is employed in a manner consistent with a state's international human rights obligations, is permitted under international law.

The United States places significant import on the necessity that immigration laws and policies, including those pertaining to immigration detention, must be enforced in a lawful, safe, and humane manner that respects the human rights of migrants regardless of their immigration status. At the same time, the United States notes that many of the sources referred to by the Commission do not give rise to binding legal obligations on the United States and are not within the Commission's mandate to apply with respect to the United States.

The United States has undertaken a political commitment to uphold the American Declaration, a non-binding instrument that does not itself create legal rights or impose legal obligations on states.<sup>1</sup> Article 20 of the Statute of the Inter-American Commission on Human Rights ("IACHR Statute") sets forth the powers of the Commission that relate specifically to Organization of American States member states which, like the United States, are not parties to the legally binding American Convention on Human Rights ("American Convention"), including to pay particular attention to the observance of certain enumerated human rights set forth in the American Declaration, to examine communications and make recommendations to the state, and to verify whether in such cases domestic legal procedures and remedies have been applied and exhausted.

The United States wishes to reiterate its respect and support for the Commission. The United States acknowledges the work of the Commission in researching and compiling its draft report. We request, however, that in keeping with its mandate under Article 20 of the IACHR Statute, the Commission center its review of applicable international standards on the American Declaration and U.S. observance of the rights enumerated therein.

For example, the Commission has cited jurisprudence of the Inter-American Court of Human Rights ("Inter-American Court") interpreting the American

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<sup>1</sup> Because the American Declaration is non-binding, the United States interprets any assertions regarding alleged violations of the American Declaration as allegations that the United States has not lived up to its political commitment to uphold the Declaration. As the IACHR Statute makes clear, the powers of the Commission to issue recommendations as set forth in Article 20 to states not party to the American Convention are strictly advisory. Article 18 of the IACHR Statute sets forth enumerated powers of the Commission with respect to member states of the Organization of American States (OAS), including preparing "such studies or reports as it considers advisable for the performance of its duties," making "recommendations to the governments of the states on the adoption of progressive measures in favor of human rights," and conducting "on-site observations in a state, with the consent or at the invitation of the government in question."



Convention. The United States has not accepted the jurisdiction of the Inter-American Court, nor is it party to the American Convention. Accordingly, the jurisprudence of the Inter-American Court interpreting the Convention or other international conventions, including the Court's advisory opinions, does not govern U.S. commitments under the American Declaration. The Commission also erroneously cites the definition of "refugee" contained in the Cartagena Declaration on Refugees. The Cartagena Declaration is a non-binding statement issued in 1984 by a number of countries in Central and South America, which has no application to the United States. The United States is a party to the 1967 Protocol Relating to the Status of Refugees, which is implemented, *inter alia*, through 8 U.S.C. §§1158 and 1231(b)(3) (respectively, §§ 208 and 241(b)(3) of the Immigration and Nationality Act). The definition of "refugee" for purposes of U.S. law is set forth in 8 U.S.C. § 1101(a)(42).

#### **INCREASE OF UNACCOMPANIED CHILDREN AND FAMILIES WITH CHILDREN IN 2014:**

In summer 2014, the United States saw a sharp rise in the number of unaccompanied children from Central America attempting to enter the United States along our Southwest border. In fact, the number of children and families had reached such a high level that it strained the ability of the United States to care for and process them. During the United States' fiscal year 2014 (October 1, 2013 – to September 30, 2014), 68,631 unaccompanied children were apprehended along the U.S. Southwest border, nearly doubling the number of unaccompanied children apprehended during the previous fiscal year. In addition, during fiscal year 2014, 68,445 individuals who are part of a family unit were apprehended along the U.S. Southwest border.

The United States is proud of its record in addressing the humanitarian crisis involving unaccompanied children last summer. We acted swiftly, reallocated resources, and were able to comprehensively address the issue in a fair and humane manner. In this regard, the United States believes the Commission's report does not adequately address the extraordinary efforts undertaken to address the dramatic rise in the flow of migrants into the United States last year. The protections afforded to unaccompanied children and families by the United States under federal law – both then and now — are extensive and are implemented by multiple federal agencies, including the Department of Homeland Security (DHS), which includes U.S. Customs and Border Protection (DHS/CBP), U.S. Immigration and Customs Enforcement (DHS/ICE), and U.S. Citizenship and Immigration Services (DHS/USCIS); the Department of Health and Human Services (HHS); the



Department of Justice (DOJ); the Department of Labor (DOL); and the Department of State (DOS).

The majority of unaccompanied children were between the ages of 15 and 17, but many were younger, some considerably so. In general, many of these children had abandoned their home countries for a complex set of motives that are a combination of push and pull factors, including a desire to be with their parents or relatives already in the United States, the threat of violence in their home country, fears that criminal gangs would either forcibly recruit or harm them, or to pursue a life of greater opportunity.

Continued economic hopelessness, weak public institutions, and violence by criminal groups suggest that a resurgent increase in the number of migrant children to the border of the United States is possible. This would -- once again -- put pressure on domestic institutions in transit and destination countries along the route and presage greater social and political instability in the region. Central America's youth bulge threatens even greater turmoil: without increased economic opportunity, the region cannot absorb the estimated six million people who will enter the workforce over the next decade. Over half the population in Guatemala and Honduras lives below the poverty line.

To address the push and pull factors of the migration of unaccompanied children, the United States continues to focus on seeking solutions not only at home but also abroad, particularly in Honduras, Guatemala, and El Salvador, the three main source countries in Central America. The United States works closely with these countries on the key concerns that led to expanded migration in 2014 and to better address the long-term underlying factors that lead to migration in the first place. For example, in April 2015, DOL announced that it will fund a \$13 million project to help at-risk youth in El Salvador and Honduras develop marketable skills and secure and retain good employment in their home countries.

The U.S. Strategy for Engagement in Central America seeks to promote three interconnected objectives — prosperity, governance, and security. Our efforts in the region are designed to mitigate the underlying factors driving outbound migration. Domestic U.S. agencies are responsible for properly addressing international protection concerns, protecting those who need it, and then beginning timely repatriation to the home countries of those who are found to not merit protection. We have committed significant resources to address the problem and will be increasing our funding to assist these countries with economic development, anti-corruption efforts, and institution building. The Administration



has requested \$1 billion for Central America in FY 2016. This request includes the level of resources necessary to improve security, advance systemic reforms to improve government accountability, and support a stronger foundation for economic growth and prosperity in Central America, especially in the Northern Triangle countries of El Salvador, Guatemala, and Honduras. The U.S. Strategy complements the regional Alliance for Prosperity Plan, developed by El Salvador, Guatemala, and Honduras.

During the influx last July, the United States quickly reallocated resources to assist with repatriations of children. For instance, through a \$7.6 million grant to the International Organization for Migration (IOM), USAID is enhancing Central American countries' ability to process and provide assistance to children and families. We acted swiftly to ensure that we adequately protected and processed these individuals, including establishing a cross-government working group to address the needs of these children at the direction of President Obama. The "Unified Coordination Group" was led by DHS' Federal Emergency Management Agency (FEMA) to coordinate the government-wide response to address the needs of the influx of unaccompanied children crossing into the United States.

## **U.S. LEGAL FRAMEWORK AND RELEVANT POLICIES:**

Contrary to allegations in the report, families with children are not "automatically and arbitrarily being detained." Individual assessments are made in accordance with U.S. law and legal processes, and parents with children are not detained with single migrants. The legal requirements for family detention appear in 8 U.S.C. Sections 1225, 1236, and 1241, and implementing regulations.

Moreover, on June 24, 2015, DHS Secretary Jeh C. Johnson announced a substantial change in the DHS's detention practices with respect to families apprehended with children. The new approach recognizes that, once a family has established initial eligibility for asylum or other relief under U.S. law, long-term detention of the family is an inefficient use of detention resources. Building on the reforms that were announced in May of this year, Secretary Johnson also announced that families who establish credible or reasonable fear of persecution will generally be released on a monetary bond or other appropriate condition of release; bond criteria will be to set bond at a level that is reasonable and realistic, taking into account the family's ability to pay, risk of flight, and public safety. Reasonable and credible fear interviews will take place within a reasonable time frame. Space in the family detention centers will, in general, be used to allow prompt removal of individuals who have not stated a claim for relief under



applicable law.

The United States also has a comprehensive legal framework in place to address the needs of the vulnerable population of unaccompanied children. The 2008 Trafficking Victims Protection Reauthorization Act (TVPRA) sets forth detailed procedures for processing all unaccompanied children who do not have lawful status in the United States. Most Mexican unaccompanied children are permitted to voluntarily return expeditiously to Mexico if they express no fear of return and it has been determined that they are able to make an independent decision to withdraw their application for admission to the United States; if they are not a victim of a severe form of trafficking; and if there is no credible evidence that they are at risk of being trafficked upon return. There is no such voluntary return provision for Central American children, who must be placed in the custody of HHS within 72 hours after determining that such child falls within the protections outlined in the TVPRA. HHS provides special care and services for unaccompanied children, including placing them in the “least restrictive setting that is in the best interest of the child,” subject to considerations of danger to self, danger to others, and risk of flight. 8 U.S.C. § 1232(c)(2)(A).

Whether or not required by law, all unaccompanied children are screened by CBP for risks, such as the risk that they will be subjected to severe forms of human trafficking or to persecution if they are returned. While in the care and custody of HHS, unaccompanied children receive an array of services, including educational services, case management, medical and mental health services, and legal services information, including information on the availability of some free legal assistance. HHS also must seek wherever possible to safely and expeditiously release a child to a parent or relative, or other qualified sponsor in the United States, which is usually accomplished within a month of the child’s apprehension at the border.

By statute, all respondents – adults or children – have a right to representation in immigration court proceedings. While this right does not entail a right to government-funded representation, the U.S. government has taken measures to improve access to free or affordable representation. DHS, DOJ, and HHS have taken numerous steps to support and encourage voluntary organizations to provide *pro bono* counsel and accredited non-attorney representatives to provide representation and services to unaccompanied children. On September 12, 2014, DOJ and the Corporation for National and Community Service, which administers AmeriCorps national service programs, awarded more than \$1.8 million in grants to legal aid organizations for a new direct representation program, “justice AmeriCorps.” Some children are also provided legal representation either during



their time in HHS care or after their release. On September 30, 2014, HHS announced \$9 million in funding over two years to provide additional representation for children after release. In cases where children do lack counsel, immigration judges are instructed and trained to assist those appearing before them.

The U.S. government has also taken measures to help educate unaccompanied children and their caregivers about immigration procedures. While in HHS care, children are provided “Know Your Rights” presentations and screenings for immigration relief. Additionally, through the Legal Orientation Program (LOP), representatives from nonprofit organizations provide information to detained aliens on their rights, immigration court, and the detention process. The Legal Orientation Program for Custodians (LOPC) provides the custodians (adult sponsors) of unaccompanied children with important information on the sponsors’ roles and responsibilities and the immigration court process.

Further, the United States has taken numerous other steps to respond to humanitarian needs and ensure both appropriate treatment in custody, and appropriate consideration and adjudication of claims to humanitarian protection under our refugee and asylum laws and policies.

These include:

- Creation of a Dangers of the Journey awareness campaign, to discourage parents from putting their children’s lives at risk by sending them on a dangerous journey to an illegal crossing of the U.S. border;
- Initiating an in-country refugee and parole processing program for certain children in El Salvador, Honduras, and Guatemala;
- President Obama’s assigning FEMA Administrator to coordinate the federal government’s response;
- Opening new processing centers, increasing DHS/CBP’s capacity to appropriately house children and adults following apprehension;
- Expanding efforts to prosecute criminal human smuggling organizations;

- Through bilateral diplomatic engagement in Central America, encouraging increased efforts to prosecute human trafficking offenses – including the forced criminal activity of children by gangs;
- Working with partner governments and civil society in Mexico and Central America, including through ongoing dialogue in the Regional Conference on Migration;
- Reassigning immigration judges and DHS attorneys to prioritize the cases of these recent entrants, including consideration of claims for asylum or other forms of protection;
- Providing legal services to unaccompanied children through a DOJ grant program, enrolling lawyers and paralegals in the justice AmeriCorps national service program to provide legal services to unaccompanied children;
- Reducing length of stay for unaccompanied children in HHS care and custody through streamlined release policy and procedures;
- Arranging for juvenile dockets in the immigration courts to help promote *pro bono* representation by allowing non-governmental organizations and private attorneys to have predictable scheduling and to represent multiple children without multiple hearing dates (every immigration court has now arranged for a juvenile docket); and
- Ensuring appropriate Legal Orientation Programs at DHS/ICE's family residential facilities.

Finally, the United States takes very seriously any allegations of mistreatment and has launched numerous investigations. The DHS Inspector General issued reports following unannounced inspections of various DHS/CBP holding facilities, and the ICE Family Residential Centers at Artesia, New Mexico and Karnes, Texas. DHS's Office for Civil Rights and Civil Liberties has also investigated numerous allegations regarding both DHS/CBP and DHS/ICE, including apprehension and custody of both unaccompanied children and adults traveling with children. On May 13, 2015, DHS/ICE announced changes in a number of its family detention practices as well as increased review and oversight.



The Commission may find more information on these changes at:  
<https://www.ice.gov/news/releases/ice-announces-enhanced-oversight-family-residential-centers>

## **REGIONAL OUTREACH:**

The U.S. government has worked closely with the governments of El Salvador, Guatemala, and Honduras, each of which increased consular staffing in cities along the U.S. Southwest border to ensure provision of services to their citizens and to register any complaints. In December 2014, the United States also established an “in-country” refugee and parole processing program for certain children. The program allows parents from El Salvador, Guatemala, and Honduras who are lawfully present in the United States to request access to the U.S. Refugee Admissions Program for their children under the age of 21 who are still in one of these three countries. Children who are found ineligible for refugee admission, but are still at risk of harm, may be considered on a case-by-case basis for parole. Parole is a discretionary mechanism under U.S. law to allow someone to come to the United States for urgent humanitarian reasons or significant public benefit. The United States established this program to provide a safe, legal, and orderly alternative to the dangerous journey that some children are currently undertaking to join parents in the United States.

## **CONCLUSION:**

The United States again thanks the Commission for this opportunity to review the draft report. While we believe the draft report contains numerous factual and legal inaccuracies and does not describe the swift and serious action that the United States took on this matter, we have addressed those inaccuracies in only a general way in this response. We urge the Commission to study U.S. law and practice more closely and consider thoroughly revising the report. The United States believes our record, policies and practices of supporting children and their families is strong but we remained committed to improve our efforts in this regard.